

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION

LARRY D. TALLACUS, 3:11-CV-833-AC

Plaintiff, ORDER

v.

KATHLEEN SEBELIUS, Secretary  
of the Department of Health  
and Human Services,

Defendant.

BROWN, Judge.

Magistrate Judge John V. Acosta issued Findings and Recommendation (#16) on February 15, 2012, in which he recommends the Court grant in part and deny in part Defendant Kathleen Sebelius's Motion (#6) to Dismiss Counts One and Three of Plaintiff's Complaint under Title VII of the Civil Rights Act of

1964. Specifically, Magistrate Judge Acosta recommends the Court grant Defendant's Motion as to Count Three for failure to state a claim for hostile work environment and deny Defendant's Motion as to Count One for retaliation.

Defendant filed timely Objections (#18) to the Findings and Recommendation with respect to the Magistrate Judge's recommendation to deny Defendant's Motion as to Plaintiff's retaliation claim. Plaintiff did not object to the Findings and Recommendation, but Plaintiff did file a Response in opposition to Defendant's Objections. The Court heard oral argument on April 17, 2012, and the matter is now before this Court pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b).

When any party objects to any portion of the Magistrate Judge's Findings and Recommendation, the district court must make a *de novo* determination of that portion of the Magistrate Judge's report. 28 U.S.C. § 636(b)(1). See also *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9<sup>th</sup> Cir. 2003)(*en banc*); *United States v. Bernhardt*, 840 F.2d 1441, 1444 (9<sup>th</sup> Cir. 1988).

This Court has carefully considered each of Defendant's Objections and her argument at the hearing on April 17, 2012, and does not find any error of law or fact in Magistrate Judge Acosta's analysis of the plausibility of Plaintiff's retaliation claim under Federal Rule of Civil Procedure 12(b). Accordingly,

the Court concludes Defendant's Objections do not provide a basis to modify the Findings and Recommendation. The Court also has reviewed the pertinent portions of the record *de novo* and does not find any error in the Magistrate Judge's Findings and Recommendation.

**CONCLUSION**

The Court **ADOPTS** Magistrate Judge Acosta's Findings and Recommendation (#16) and, accordingly, **GRANTS** Defendant's Motion (#6) to Dismiss as to Plaintiff's Count Three for hostile work environment and **DENIES** Defendant's Motion as to Plaintiff's Count One for retaliation. Thus, this matter will proceed on Plaintiff's remaining Counts One and Two in his Complaint and is returned to the Magistrate Judge for further proceedings.

IT IS SO ORDERED.

DATED this 18<sup>th</sup> day of April, 2012.

/s/ Anna J. Brown

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ANNA J. BROWN  
United States District Judge